UNITED STATES PATENT AND TRADEMARK OFFICE

APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
10/615,504	07/08/2003	Philippe Bazot	FR920020030US1	9216

23550 7590 01/04/2007		EXAMINER
HOFFMAN WARNICK & D'ALESSANDRO, LLC		SURVILLO, OLEG
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SHORTENED STATUTORY PERIOD OF RESPONSE	MAIL DATE	DELIVERY MODE
3 MONTHS	01/04/2007	PAPER

Please find below and/or attached an Office communication concerning this application or proceeding.

If NO period for reply is specified above, the maximum statutory period will apply and will expire 6 MONTHS from the mailing date of this communication.

PTOL-90A (Rev. 10/06)

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE <u>3</u> MONTH(S) OR THIRTY (30) DAYS, WHICHEVER IS LONGER, FROM THE MAILING DATE OF THIS COMMUNICATION.
- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133).
  Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

Status

1)☐ Responsive to communication(s) filed on _____.

2a)☐ This action is **FINAL**.   2b)☒ This action is non-final.

3)☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

Disposition of Claims

4)☒ Claim(s) *1-12* is/are pending in the application.

    4a) Of the above claim(s) _____ is/are withdrawn from consideration.

5)☐ Claim(s) _____ is/are allowed.

6)☒ Claim(s) *1-12* is/are rejected.

7)☐ Claim(s) _____ is/are objected to.

8)☐ Claim(s) _____ are subject to restriction and/or election requirement.

Application Papers

9)☒ The specification is objected to by the Examiner.

10)☒ The drawing(s) filed on <u>08 July 2003</u> is/are: a)☒ accepted or b)☐ objected to by the Examiner.

    Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).

    Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).

11)☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

Priority under 35 U.S.C. § 119

12)☒ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).

    a)☒ All   b)☐ Some * c)☐ None of:

       1.☐ Certified copies of the priority documents have been received.

       2.☐ Certified copies of the priority documents have been received in Application No. _____.

       3.☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

    * See the attached detailed Office action for a list of the certified copies not received.

Attachment(s)

1) ☒ Notice of References Cited (PTO-892)

2) ☐ Notice of Draftsperson's Patent Drawing Review (PTO-948)

3) ☐ Information Disclosure Statement(s) (PTO/SB/08)
    Paper No(s)/Mail Date _____.

4) ☐ Interview Summary (PTO-413)
    Paper No(s)/Mail Date. _____.

5) ☐ Notice of Informal Patent Application

6) ☐ Other: _____.

DETAILED ACTION

Specification

1.   The disclosure is objected to because of the following informalities:

Page 6, line 9 reads: not "available" wherein it appears that it should read: "not available".

Page 10 line 9 reads: "If it the case" wherein it appears that it should read: "If it is the case".

It is not clear from the specification how the percentage of availability for the whole server is being determined and whether the service availability is different from the server availability. The only indication of the contents of the service availability token is shown on page 10, lines 20-26, but it is ambiguous how the detailed information contained in the token is being converted into percentage of availability of the associated URL.

Appropriate correction is required.

Claim Objections

2.   Claims 2 and 6 are objected to because of the following informalities: in claim 2 word 'several' referring to the number of entries and number of URLs appear to be ambiguous. It is unclear of what is the limit on the amount of entries in the context table and on the amount of URLs associated with a same server name. In claim 6 word 'several' referring to the number of parameters appears to be ambiguous. It is unclear of

what is the limit on the amount of parameters associated with said service availability request.

Claims 3-11 are objected to because of the following informalities: in claim 3 the availability of the associated URL which is a percentage of availability is ambiguous because specification does not provide a clear explanation of how availability of URL is being expressed as percentage of availability.

Appropriate correction is required.

Claim Rejections - 35 USC § 101

3.   35 U.S.C. 101 reads as follows:

> Whoever invents or discovers any new and useful process, machine, manufacture, or composition of matter, or any new and useful improvement thereof, may obtain a patent therefor, subject to the conditions and requirements of this title.

Claims 1-11 are rejected under 35 U.S.C. 101 because the claimed invention is directed to non-statutory subject matter such as no tangible result is produced. The process steps of claim 1 comprise looking in a context table, appending a service availability request, appending service availability token, removing service availability token, and updating context table, which produce a result that is not conveyed in a form readily usable in a practical application such that there is no real-world and tangible result obtained as the result of these manipulations.

Claims 2-11 fail to resolve deficiencies of claim 1 and therefore are also rejected as failing to produce a useful, concrete and tangible result under 35 U.S.C. 101.

Claim Rejections - 35 USC § 103

4.   The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all

obviousness rejections set forth in this Office action:

> (a) A patent may not be obtained though the invention is not identically disclosed or described as set
> forth in section 102 of this title, if the differences between the subject matter sought to be patented and
> the prior art are such that the subject matter as a whole would have been obvious at the time the
> invention was made to a person having ordinary skill in the art to which said subject matter pertains.
> Patentability shall not be negatived by the manner in which the invention was made.

5.   Claims 1-12 are rejected under 35 U.S.C. 103(a) as being unpatentable over

Choquier et al. (5,774,668) in view of Masters (6,970,933).

As to claim 1, Choquier shows a method for directing service requests from user

workstations comprising client microcomputers (102) to the most available content

servers comprising application servers (120) through a proxy server comprising a

Gateway microcomputer (126). Choquier shows looking in a context table comprising a

service map (136) in the proxy server to determine the content server able to provide

the requested service (col. 8, lines 7-9). It is inherent for the service request to be

defined by URL since the communication between client and content server via proxy is

established using TCP/IP protocol and HTTP being a request/response protocol

between client and content server (col. 5, lines 5-9). Choquier shows sending service

request from proxy server to determined content server (col. 8, lines 21-24) and sending

reply messages from determined content server to client via proxy server (col. 8, lines

25-27). Choquier shows updating context table in proxy server using service availability

token received from a content server (col. 10, lines 45-54) where service availability

token comprises local map (140) (col. 10, lines 66-67; col. 11, lines 1-12).

Choquier does not show that service availability request is appended to service request from client because proxy server is configured to automatically request service availability in predetermined time intervals (col. 10, lines 49-54). Choquier does not show that service availability token is appended to reply from content server because service map dispatcher (144) is configured to automatically request service availability tokens from content servers (col. 10, lines 42-45), as well as removing service availability token since it was not appended before.

Masters shows appending a cookie to a HTTP service request (col. 5, lines 24-27) and appending a SET COOKIE command in the header of the HTTP response from the content server (col. 5, lines 16-19).

It would have been obvious to one of ordinary skill in the art at the time of the invention to modify the method of Choquier by inserting a parcel of data in the header of HTTP request and response, such as a cookie, in order to save and communicate service availability request and token comprising state information between a client/proxy and a content server (col. 3, lines 33-35, lines 44-47; col. 4, lines 3-4).

As to claim 2, Choquier shows that context table includes several entries (400) corresponding to several URLs comprising service names and associated with the same server name, where URLs refer to MAIL and BBS services that reside on the same server (120e) (col. 9, lines 27-30).

As to claim 3, Choquier shows that context table contains "availability" as a parameter for each entry associated with URL where availability is expressed as a percentage (col. 10, lines 66-67; col. 11, lines 1-7; col. 15, lines 1-3).

As to claim 4, Choquier shows that service request is rejected if the parameter comprising "minimum throughput requirement" in context table comprising service priority table (1220) is defined as not available.

Choquier does not show that service request is rejected if the parameter "availability" is defined as not available.

Examiner takes Official notice that it would have been obvious to one of ordinary skill in the art at the time of the invention to modify the method of Choquier to define the parameter "availability" as not available in order to specify that the parameter "availability" of zero indicates that the content server is heavily loaded and as a result, not available (col. 11, lines 6-7).

As to claim 5, Choquier shows that context table includes multiple entries for the same server as recited in claim 2 where the entry with the parameter "availability" comprising CPU LOAD being the highest one selected when looking for an entry, at the top of the context table comprising service availability token (Fig. 4, (140)).

As to claim 6, Choquier shows that context table contains several parameters (Fig. 4, CPU LOAD, CPU INDEX) associated with the service availability token received from content servers, these parameters being updated in the context server upon reception of service availability token (col. 10, lines 49-54). It is inherent that the parameters contained in the context table and associated with the service availability request are the same as the parameters in the service availability token since the service availability token returns the parameters requested.

As to claim 7, Choquier shows refreshing the entry of context table by taking into account variables comprising CPU LOAD and CPU INDEX values included in the context table, which are a function of parameter "availability" comprising FREE CPU and AVAILABLE CPU (col. 14, lines 60-67; col. 15, lines 1-3).

As to claim 8, Choquier shows that the context table contains "availability" as a parameter and serves to inform of change in state of any content server in the system (col. 11, lines 46-47).

Choquier does not show that parameter "availability" is set to "not available" when number of retries is equal to a predetermined maximum number.

Examiner takes Official notice that it would have been obvious to one of ordinary skill in the art at the time of the invention to modify the method of Choquier to set the parameter "availability" as "not available" when number of retries is equal to a predetermined maximum number in order to specify that the parameter "availability" of zero indicates that the content server is heavily loaded and as a result, not available (col. 11, lines 6-7).

As to claim 9, Choquier in view of Masters shows that service request comprising HTTP request (108A) is written in HTML since HTML is a simple data format that is used to create hypertext documents that are supported by the HTTP protocol (col. 3, lines 9-16 in Masters). Choquier in view of Masters shows service availability request comprising cookie that is contained in a header of HTTP service request (col. 3, lines 42-55 in Masters).

As to claim 12, Choquier shows means for implementing the steps of claim 1 such as user workstations comprising client microcomputers (102), content servers comprising application servers (120), a proxy server comprising a Gateway microcomputer (126), context table comprising a service map (136), and service availability token comprising local map (140).

Claims 10-11 are rejected under 35 U.S.C. 103(a) as being unpatentable over Choquier et al. (5,774,668) in view of Masters (6,970,933) in further view of McKelvie et al. (2006/0173959).

As to claim 10, Choquier in view of Masters do not show service availability token to be expressed in XML format.

McKelvie shows that XML is a standard for defining data interchange formats within the Internet environment and that XML format provides an extensible mechanism to impose constrains on the storage layout and logical structure of a document (Paragraph [0030]).

It would have been obvious to one of ordinary skill in the art at the time of the invention to modify the method of Choquier by expressing service availability token in XML format in order to facilitate the exchange of data across different computer systems connected to the Internet.

As to claim 11, Choquier shows updating context table when receiving service availability token from a content server (col. 10, lines 45-54) and changing parameter

"availability" by overwriting its old value with the updated value, based on the last
received token (col. 10, lines 54-57; col. 11, lines 10-12).

Conclusion

6.   The prior art made of record and not relied upon is considered pertinent to
applicant's disclosure.

It was found that IBM WebSphere Application Server Network Deployment
"addresses the needs of highly available, high volume environments with the inclusion
of sophisticated load balancing, caching and centralized security capabilities based on
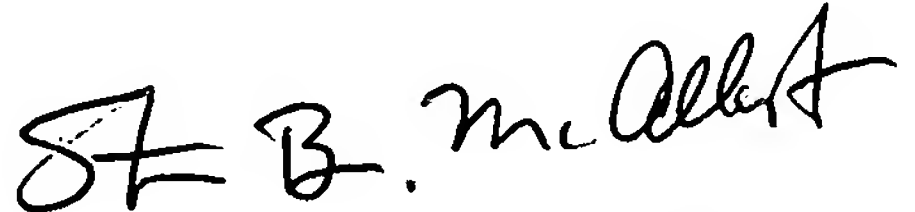Edge Components, known as WebSphere Edge Server in earlier releases."

Also, IBM Tivoli Composite Application Manager for Internet Service Monitoring,
Version 2.4.2 appears to test the availability of Web pages through a proxy server.

Any inquiry concerning this communication or earlier communications from the
examiner should be directed to Oleg Survillo whose telephone number is 571-272-9691.
The examiner can normally be reached on M-Th 8:00am-5pm, F 8:00am-4pm EST.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's
supervisor, Steven McAllister can be reached on 571-272-6785. The fax phone number
for the organization where this application or proceeding is assigned is 571-273-8300.

Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see http://pair-direct.uspto.gov. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free). If you would like assistance from a USPTO Customer Service Representative or access to the automated information system, call 800-786-9199 (IN USA OR CANADA) or 571-272-1000.

Oleg Survillo

STEVE MCALLISTER
SUPERVISORY PATENT EXAMINER